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Devassia Vs. Ancy

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Court : Kerala

Decided On : Oct-26-2006

Reported in : II(2007)DMC677; 2007(1)KLT377

Judge : K.A. Abdul Gafoor, J.

Acts : Indian Divorce Act; Code of Criminal Procedure (CrPC) - Sections 125

Appeal No. : R.S.A. No. 1396 of 2004

Appellant : Devassia

Respondent : Ancy

Advocate for Def. : K.V. Bhadra Kumari, Adv. (Caveator)

Advocate for Pet/Ap. : P.M. Mohammed Shiraz, Adv.

Judgement :

K.A. Abdul Gafoor, J.

1. The father is assailing the decree granting maintenance in favour of his three daughters in this appeal.

2. Three ill-fated daughters, whose parents are living separately, approached the Munsiff's Court, Kalpetta, seeking maintenance from his father, who is employed as a Sales Tax Officer. They were, at that time, aged 15, 12, and 11 years. The

trial court granted maintenance at Rs. 3,000/- for all of them together from 20.12.1998, as claimed in the plaint, until they get married.

3. In appeal by the father, the decree was confirmed with a modification that the liability subsists only until the children are capable to look after themselves or until they are given in marriage, whichever is earlier. Again, the father, in this second appeal is raising mainly two questions of law.

(i) Whether a Christian father is, in law, liable to maintain his children, who had attained the age of majority?

(ii) Whether the civil court was liable to take into account an order of maintenance competent to pass under Section 125 Cr.P.C. While considering the claim for maintenance in a civil suit.

4. An additional question of law is also now raised, as the courts below had restrained him from alienating the property as to:

(iv) Whether, in a suit for maintenance, a decree can be passed restraining the defendant from alienating the property

5. Substantiating the questions of law, it is contended that there is no law obliging a Christian father to maintain his children, much less his major children. Even the interpretation given to the common law principles including that relating to equity and good conscience, as enunciated by a Full Bench of this Court in Mathew Varghese v. Rosamma Varghese : AIR2003 Ker312 a Christian father is mulcted with the liability to maintain the minor son alone, or rather minor children alone.

6. Out of the three daughters, two had already become major. Therefore, the contention is that the appellant did not have any liability to maintain them.

7. Paternity is not disputed. The marriage is even now subsisting. Divorce proceedings are pending. The father and mother of the children are living separately. The father is having a decent income, being employed as a Sales Tax Officer, a high level post. Of course, the mother is employed as L.D.Clerk. The children are living with the mother. It is disclosed before me that the eldest among

them is now a student of Nursing Course. The second is in her graduation course, while the 3rd one is studying for Plus Two Course.

8. As observed by the full Bench in Scariah Varghese v. Marykutty 1991 (2) KLT 71, it may be true that there is no specific statutory provision mandating a Christian father or a Christian husband to maintain his children and his wife. Of course, in Indian Divorce Act certain provisions are there regarding the alimony and maintenance to the wife and children. Since there are provisions in the Indian Divorce Act, it cannot be said that only when a claim for separation is initiated under the Statute, a decree can be granted for alimony to the wife and maintenance to the children.

9. Referring to Cheria Varkey v. Ouseph Thresia and Ors. AIR 1955 T.C. 255, the Full Bench in Mathew Varghese v. Rosamma Varghese : AIR2003 Ker312 observed that the principle enunciated therein shall be made applicable in the case of a claim for maintenance against a father filed by his child/children. Father is supposed to be the head of the household with an obligation to maintain his wife and children. Therefore, it will be atrocious to say that the father has no liability to maintain the children only on the ground that he professes Christian religion.

10. Taking note of these aspects, the later Full Bench of this Court in Mathew Varghese v. Rosamma Varghese : AIR2003 Ker312 had held that right to life is a constitutional guarantee and hence the other provisions of law; personal, public or private; has to be in conformity with the constitutional mandate and therefore, it must be interpreted and the law must be laid down to fulfill and promote the constitutional promise. Therefore, the obligation of a father springs as the guardian of the family; When he has an obligation to maintain the children in his custody and it carries a duty to give best care to them, necessarily, there was a corresponding obligation to maintain the children and there is a corresponding right that the child has a right to be maintained. In such circumstances, it cannot, any longer, be contended that merely because one professes Christian religion, he does not have any liability to maintain his children.

11. Of course, the question answered in Mathew Varghese v. Rosamma Varghese : AIR2003 Ker312 was only in respect of the liability of a father to maintain his

minor son. That case has not appreciated the question with regard to the Christian father to maintain his children. So far as the girl children, who had attained majority, but continuing their education are concerned, that liability will still subsist and the father will be liable to maintain the girl children, in spite of their attaining the majority. So, going by the principles and tenor of the decision in Mathew Varghese v. Rosamma Varghese (cited supra), there cannot have any doubt that a Christian father will have the obligation to maintain his daughters, who have not become capable of looking after themselves, notwithstanding their attaining the age of majority. In such circumstances, the first among the questions of law has to be answered against the appellant. It has to be noticed that the lower appellate court has limited the liability and obligation cast on the appellant only until the children are able to look after themselves or being given in marriage, whichever is earlier.

12. It is true that in Ext.A1, the competent magistrate had ordered maintenance to be paid by the appellant initially at the rate of Rs. 1,000/- per mensum for all the three together, which has been raised to Rs. 1,500/-. It is to be noticed that a competent magistrate, at the relevant point of time, could award at the best only Rs. 500/- for one child towards maintenance. But as per the jurisdiction of the civil court, there is no such limitation. In such circumstances, when the court below had awarded maintenance at the rate of Rs. 3,000/- for all the three children, who are students, it cannot be taken that the court below had not given due advertence to the order of the Magistrate. Even if Ext.A1 is taken note of, it cannot be contended that the amount awarded by the court below is, in any way, excessive. But it has to be understood that the maintenance awarded, as per the decree, is inclusive of the amount awarded by the magistrate in Ext.A1. In other words, the children are not entitled to claim maintenance under the decree as well as under Ext.A1 separately.

13. When the children are found to be entitled to maintenance due from the father, necessarily, it can be stated that there can always be a charge on the property for maintenance. But it is not proper for any court to restrain its owner from alienating the property even to discharge his debt, including the decree debt.

Therefore, the appeal is allowed in part, retaining the charge towards the maintenance over the property, but lifting the injunction granted by the court below.

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